

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 446 of 1998

and

SPECIAL CIVIL APPLICATION No 520 of 1998

GOYAL TRADERS

Versus

DR NEVA

Appearance:

MR BM MANGUKIYA for Petitioners

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Order: 04/02/98

C.A.V. ORDER

1. As these two petitions are closely connected and arising out of the same industrial dispute raised by the respondent No.1, same are being taken up for hearing together and are being decided by this common order.

2. The respondent No.1-workman herein has raised an industrial dispute that the petitioners have illegally terminated his services orally on 1st August, 1990. That dispute has been referred for adjudication to the Labour Court, Bhavnagar wherein it was registered as Reference (LCB) No.490/90. The petitioners were given notice of those proceedings but despite of the notice it appears that they have not contested the same and ultimately, an award came to be passed against them on 17th July, 1993. The award has been made for reinstatement of the respondent with continuity of service and full backwages. This award was published on 30th July, 1993. An application came to be filed by the petitioners before the Labour Court for setting aside of the said award and that application was rejected by the Labour Court on 30th April, 1997. The petitioners filed another application on 10th July, 1997 before the Labour Court for bipartite hearing. That application is pending before the Labour Court. On 22nd July, 1997, in those proceedings, an application has been filed for the grant of interim relief and that application is also stated to be pending.

As the award was not implemented, the respondent filed an application under section 33-C (2) of the Industrial Disputes Act, 1947 for computation of the benefits and despite of notice in those proceedings, the petitioners have also not put appearance in those proceedings and ultimately, an order came to be passed against the petitioners on 26th August, 1997 in favour of the respondent-workman, which is the subject matter of challenge in special civil application No.520/98. Under the order dated 26th August, 1997, the Labour Court has computed the amount of Rs.1,99,633/- to be paid by the petitioners to the respondent-workman.

3. Admittedly, the application of the petitioner for bipartite hearing is pending before the Labour Court at Bhavnagar. The application of the petitioners for interim relief is also pending. It is true that the Labour Court has proceeded in the proceedings initiated by the respondent-workman under section 33-C (2) of the Industrial Disputes Act, 1947 and final order has also been passed but nevertheless still the Labour Court has not become functus-officio to pass an appropriate order on the application filed by the petitioners for grant of interim relief. Instead of pressing for early hearing of the applications for interim relief as well as for bipartite hearing, the petitioners have approached this Court and challenge has been made to the original award as well as to the order of the Labour Court which has been passed under section 33-C (2) of the Industrial Disputes Act, 1947. When the petitioners' applications for bipartite hearing as well as for the grant of interim relief are pending before the Labour Court, this petition against the original award as well as the order passed by the Labour Court on the application of the petitioners for setting aside of the said award is not maintainable. The petitioners should have waited for the decision of the Labour Court on the application filed by them for bipartite hearing.

4. So far as the second writ petition is concerned, the petitioners have not participated in the proceedings. The petitioners have allowed those proceedings to go ex-parte and when the ex-parte orders have been passed, they have challenged those orders before this Court. The petitioners were served with the notice of those proceedings but they have chosen not to contest those proceedings. This conduct of the petitioners itself would have been sufficient for dismissal of special civil application No.520/.98 but still that course is not adopted for the reason that the petitioners should be given an opportunity to approach to the Labour Court in

the proceedings which have been initiated by the respondent-workman under section 33-C (2) of the I.D. Act, 1947.

5. In the result, both these special civil applications are dismissed. So far as the special civil application No.446/98 is concerned, it is expected of the Labour Court, Bhavnagar that it shall expeditiously decide the applications of the petitioners filed for bipartite hearing as well as for grant of interim relief. So far as the special civil application No.520/98 is concerned, it is open to the petitioners to approach to the Labour Court at Bhavnagar for setting aside of the said order or for modification of the said order on merits and if such an application is filed, the said Court shall decide the same on merits in accordance with law.

(S.K. Keshote,J)

zgs/-